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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

12 WILDEARTH GUARDIANS,
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14 Plaintiff,

Case No. 4:11-CV-5651-YGR and
Consolidated Case No. 4:11-CV-5694-YGR

14 v.

15 LISA JACKSON, in her official capacity as
16 Administrator of the Environmental Protection
17 Agency,
18 Defendant.

Response to Motion for Reconsideration
of June 14, 2012 Order

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20 On June 14, 2012, the Court issued an order rejecting the parties' stipulation for entry of
21 final judgment pursuant to Fed. R. Civ. P. 54(b) on the claims dismissed by the Court on May 7,
22 2012 (referred to as the "Prevention of Significant Deterioration" or "PSD" claims"). Plaintiffs
23 in these consolidated actions have moved for reconsideration of the June 14 Order. Defendant
24 Lisa P. Jackson, Administrator, United States Environmental Protection Agency ("EPA"), does
25 not oppose the entry of final judgment, but takes no position on whether Plaintiffs have
26 demonstrated that reconsideration is warranted.

27 Plaintiffs' Memorandum of Points and Authorities ("Memo") contains certain assertions
28 that require clarification. As the Plaintiffs note, counsel for the parties have reached agreement

on most of the terms of a proposed consent decree that would resolve the remaining non-PSD claims in this matter, but counsel for EPA cannot bind the Agency to those terms. Counsel for EPA can only recommend those terms for approval by authorized officials. While counsel for EPA are not now aware of any reason that the settlement would not be approved by the necessary officials at EPA and the Department of Justice, counsel cannot foreclose that possibility. Furthermore, even if such approval is forthcoming, EPA will have to provide public notice and seek comment on any proposed consent decree as required by section 113(g) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(g). Again, counsel for EPA cannot assure the Court that this process will not result in a decision to withdraw or withhold consent to a consent decree.

In addition, even though EPA does not oppose the entry of final judgment on the PSD claims, the Agency certainly does not concur with all the allegations in Plaintiffs’ Memo. At this point, however, given that EPA does not oppose the entry of partial final judgment on the PSD claims, there is no need to analyze the allegations in Plaintiffs’ Memo.

Respectfully submitted,

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